

SERVICE DATE – JULY 27, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 242X)¹

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
MONTGOMERY COUNTY, KS

Decided: July 25, 2006

Union Pacific Railroad Company (UP) and South Kansas & Oklahoma Railroad, Inc. (SKO) (collectively, applicants), jointly filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for UP to abandon, and for SKO to discontinue service over, approximately 0.8 miles of railroad located: (1) between milepost 166.0, at the west bank of the Verdigris River, and milepost 166.6, at the west edge of Sunflower Road; and (2) at the portion of UP's railroad easement between milepost 166.6, at the west edge of Sunflower Road, and milepost 166.8, at the west edge of Linden Street, near Coffeyville, in Montgomery County, KS.² Notice of the exemption was served and published in the Federal Register on June 29, 2006 (71 FR 37162-63). The exemption is scheduled to become effective on July 29, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 3, 2006. In the EA, SEA states that the Kansas Department of Health and Environment, Bureau of Waste Management (KDHE) has expressed concern about the disposal of track materials that cannot be salvaged and remediation following the removal of track materials. KDHE has indicated that an environmental investigation within the Refinery Company's property is being conducted, but KDHE is concerned that there is no such investigation being conducted outside the facility's boundaries. Therefore, SEA recommends that, before beginning salvage activities on the line, UP consult with KDHE

¹ The notice served and published on June 29, 2006, embraced STB Docket No. AB-471 (Sub-No. 7X), South Kansas and Oklahoma Railroad, Inc.—Discontinuance of Service Exemption—in Montgomery County, KS.

² Applicants state that the portion of the rail line over which UP has a railroad easement is located within the premises of Coffeyville Resources Refinery & Marketing, LLC (Refinery Company), and that Refinery Company owns the right-of-way and track materials within that portion of the rail line. Applicants also state that, by lease effective December 10, 1990, UP leased the line and adjacent trackage to Southeast Kansas Railway Company, which subsequently was merged into SKO. According to applicants, UP intends to make private non-rail use of the land east of the refinery.

(Mr. Bob Medina, 785-296-6617) regarding KDHE's concerns and report the results of this consultation to SEA in writing.

To address the concerns raised by the United States Department of the Interior, Fish and Wildlife Service (USFWS), SEA recommends in the EA that UP consult with USFWS, pursuant to the provisions of the Migratory Bird Treaty Act (MBTA). In addition, SEA notes that, if the proposed construction activities result in the taking of nesting migratory birds, USFWS recommended that UP be required to conduct a field survey during the nesting season of the affected habitats and structures to determine the presence of active nests. Therefore, SEA recommends that UP be required to consult with USFWS before beginning salvage activities regarding the provisions of the MBTA, and to report the results of this consultation to SEA in writing.

In the EA, SEA indicated that it conducted a search of the National Park Service's Native American Consultation Database (Database)³ to identify Federally recognized tribes that may have an interest in the project. SEA further indicated that, according to the Database, the Osage Tribe of Oklahoma (Tribe) may have an interest in the proposed abandonment. SEA stated that it would ensure that the Tribe receive a copy of the EA for their review and comment.

Comments to the EA were due by July 18, 2006. No comments were received by the due date. Accordingly, the conditions recommended by SEA in the EA will be imposed.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption for abandonment of the line described above is subject to the conditions that UP shall: (1) consult with KDHE, (Mr. Bob Medina, 785-296-6617) before beginning salvage activities regarding KDHE's concerns about the disposal of track materials that cannot be salvaged and remediation following the removal of track materials, and report the results of this consultation in writing to SEA, and (2) consult with USFWS before beginning any salvage activities to discuss USFWS's concerns pursuant to the MBTA, and report the results of this consultation in writing to SEA.

³ See Database at <http://www.cast.uark.edu/other/nps/nacd>.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary